

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Elmer Campbell,)	
<u>et al.</u> ,)	
)	
Plaintiffs,)	Case No. C-1-01-527
)	
vs.)	
)	
International Paper)	
Company, <u>et al.</u> ,)	
)	
Defendants.)	

O R D E R

Plaintiffs in this case allege that Defendant Smart Paper discriminated against them on the basis of age by not hiring them upon International Paper Company's sale of the Hamilton B Street Mill to Smart Paper. In addition, Plaintiffs claim that International Paper defamed them by maliciously or reckless giving Smart Paper unfavorable employment references. Both Smart Paper and International Paper have outstanding motions for summary judgment on Plaintiffs' claims which, at this point, have been fully briefed.

In its motion for summary judgment, Smart Paper argues, inter alia, that it did not hire Plaintiffs because of the employment references it received from International Paper and that age played no part in its hiring decisions. In its reply brief, Smart Paper argues that certain statements in Plaintiffs' memorandum in opposition to International Paper's motion for summary judgment, specifically, statements to the effect that the

unfavorable references from International Paper are the reason why Smart Paper did not hire them, constitute admissions that Smart Paper did not discriminate against them on the basis of age. In other words, Smart Paper argues that summary judgment on Plaintiffs' age discrimination claims is appropriate because Plaintiffs now admit, by virtue of their response to International Paper's motion for summary judgment, that an employee's bad reference, and not his or her age, was the motivating factor in the hiring decision made by Smart Paper.

Because of the procedural posture of the case, Smart Paper was unable to raise this argument until Plaintiffs filed their memoranda in opposition to the motions for summary judgment. Therefore, in order to give Plaintiffs an adequate opportunity to respond to this argument, the Court invites Plaintiffs to file a sur-reply brief which is limited to addressing Smart Paper's contention that these statements are binding admissions. Plaintiffs shall file their sur-reply within ten (10) days of the date of this order. No further briefing on this issue is expected or desired.

IT IS SO ORDERED

Date December 5, 2003

s/Sandra S. Beckwith
Sandra S. Beckwith
United States District Judge